

# Children's Television Standards Variation 2011 (No. 1) Explanatory statement

DECEMBER 2011

# LEGISLATIVE INSTRUMENTS ACT 2003

## Section 26 – Explanatory Statement

### **Children’s Television Standards Variation 2011 (No. 1) made under the *Broadcasting Services Act 1992***

On 15 December 2011, the Australian Communications and Media Authority (the ACMA) determined the *Children’s Television Standards Variation 2011 (No. 1)* (the CTS Variation), which varies the *Children’s Television Standards 2009* (the CTS). The ACMA’s determination of the CTS Variation was made under subsection 122(1) of the *Broadcasting Services Act 1992* (the BSA) and commences on the day after it is registered on the Federal Register of Legislative Instruments (FRLI).

### **The CTS**

Section 122 of the BSA requires the ACMA to determine standards for commercial television broadcasting licensees (licensees) that relate to programs for children.

As required by section 122 of the BSA, the ACMA determined the CTS. The objects of the CTS are to ensure that children have access to a variety of quality television programs made specifically for them and to provide for the protection of children from possible harmful effects of television.

### **Intended impact and effect of the CTS Variation**

Compliance with the CTS is a condition of commercial television broadcasting licences (see clause 7(1)(b) of Schedule 2 to the BSA).

The ACMA identified a number of issues concerning Part 2 of the CTS, which sets out the requirements for licensees to provide children’s programs and preschool children’s programs. The ACMA considers the CTS Variation is necessary to address these issues by:

- > Changing the meaning of 'school holidays' to specifically cater for licensees that broadcast in more than one State or Territory.
- > Allowing C periods and P periods that have been displaced as a result of expected or unexpected events, to be further displaced as a result of

unexpected events. The CTS Variation is intended to create greater flexibility for licensees' programming in times of important events.

- > Further detailing the requirements to broadcast information about when or if a C period or P period will be rescheduled as a result of a variation or displacement of a C period or P period in the schedule. The amendments are intended to provide for specific instances where compliance with the previous notice provisions could have been impossible.
- > Clarifying obligations that apply to new licensees in their first year of broadcasting, and ensuring also that fair and practicable obligations are imposed on new licensees.
- > Correcting minor drafting errors.

## Consultation

Before deciding to determine the CTS Variation, the ACMA took the following steps by way of consultation:

- > On 26 July 2011, the ACMA wrote to all licensees and their industry representatives advising its intention to amend Part 2 of the CTS to address the issues outlined above.
- > On 20 October 2011, the ACMA announced on its website proposed technical amendments to Part 2 of the CTS. The ACMA posted a copy of the proposed CTS Variation on its website and sought public comment by 11 November 2011.
- > On 20 October 2011, the ACMA also wrote to all licensees and their industry representative bodies seeking comment on the proposed CTS Variation by 11 November 2011.

Free TV Australia (Free TV) provided the only formal submission in response to the proposed CTS Variation. The issues raised in the submission were considered, and informed the drafting of the final CTS Variation.

## Description of variations to the CTS

### **CTS 3: Eligible material for 2010 to be notified in a schedule**

CTS 3 was a transitional arrangement for the provision by licensees of an annual program schedule for 2010. The CTS Variation omits CTS 3 as it is no longer relevant. Two headings from the CTS which are likewise no longer relevant are also omitted.

### **CTS 5: Definitions**

CTS 5 defines terms used in the CTS and clarifies the application of the CTS.

The CTS Variation inserts definitions for the following terms, which are relevant to new provisions which make clear the quota obligations for new licensees, in their first year of broadcasting, when they commence broadcasting part way through 2011 or a subsequent year:

- > broadcasting commencement day.
- > first year of broadcasting.
- > pro rata formula.

The CTS Variation also corrects minor drafting errors in CTS 5.

#### **CTS 5A: Meaning of *pro rata formula***

The CTS Variation inserts CTS 5A to define the new term 'pro rata formula'. It is intended that new licensees that commence (or were required to commence) broadcasting part-way through a quota period are to meet proportionately reduced quotas for that quota period. The pro rata formula is to be used to calculate the reduced quotas.

For example, Licensee A was allocated a commercial television broadcasting licence on 4 February 2011 and commences broadcasting television programs on 1 February 2012. Using the pro rata formula, and in accordance with CTS 8 (as amended by the CTS Variation), the minimum number of hours of C material that Licensee A is required to broadcast in 2012 is calculated as follows:

$$\frac{335}{366} \times 260 = 237.97813 \text{ hours}$$

Therefore, in 2012, eligible material for Licensee A must include at least 237.97813 hours of C material.

#### **CTS 5B: Meaning of *school holidays***

The CTS Variation inserts CTS 5B which amends the definition of 'school holidays' in so far as it applies to a licensee for a licence area that is in more than one State or Territory. The definition of 'school holidays' remains unchanged for a licensee for a licence area in one State or Territory.

The new CTS 5B(3) is intended to apply to a licensee that broadcasts a single stream of C programming in C periods to all States and Territories in its licence area. For example, Licensee B broadcasts C programs in C periods that are screened on the same date and at the same time in all States or Territories in its licence area (even though time zone differences between States and Territories in the licence area may

mean that local time in different parts of the licence area is not always identical). In this case, 'school holidays' for Licensee B would be the public holidays and government primary school holidays in the State or Territory that contains the largest proportion of the population in its licence area.

CTS 5B(4) is intended to apply to a licensee that broadcasts separate transmissions of C programming in C periods for the individual States or Territories in its licence area. Licensee C, for example, broadcasts C programs in C periods in one State in its licence area, and on the same date, although possibly at a different time, broadcasts a separate transmission of C programs in C periods in the other State in its licence area. For Licensee C, 'school holidays' for the C programming broadcast in the first State would be the public holidays and government primary school holidays in that State, and for the C programming broadcast in the other State, 'school holidays' would be the public holidays and government primary school holidays in that State.

CTS 5B(5) is intended to apply to a licensee that broadcasts separate transmissions of C programming in C periods for different groups of States or Territories in its licence area. Licensee D, for example, broadcasts in its licence area one transmission of C programs in C periods into South Australia, Victoria and New South Wales, and on the same date, although possibly at a different time, broadcasts a separate transmission of C programs in C periods into Queensland and the Northern Territory. 'School holidays' for Licensee D would be:

- > For its South Australia, Victoria and New South Wales C programming transmissions– the public holidays and government primary school holidays in whichever of those States has the highest proportion of the population of the licence area within South Australia, Victoria and New South Wales.
- > For its Queensland and Northern Territory C programming transmissions– the public holidays and government primary school holidays in whichever of Queensland and the Northern Territory has the highest proportion of the population of the licence area within Queensland and the Northern Territory.

CTS 5B(6) also states that the proportion of the population of a licence area is to be determined in accordance with census data collected by the Australian Bureau of Statistics.

### **CTS 8: Requirements that apply to both C material and P material**

CTS 8 sets out the number of hours of C and P material licensees are required to broadcast each year and describes how that material is able to be counted towards that obligation.

The CTS Variation amends CTS 8 as it applies to new licensees. The number of hours of C and P material that new licensees are required to broadcast in their first year of broadcasting is reduced using the pro rata formula (as defined).

The CTS Variation also corrects a minor drafting error in CTS 8(7).

### **CTS 9: Eligible material to be notified in a schedule**

CTS 9 sets out the obligations of a licensee to notify to the ACMA its annual schedule for C and P material in a form approved by the ACMA.

The CTS Variation amends CTS 9 as it applies to new licensees. New licensees, in their first year of broadcasting, are required to provide their annual schedule to the ACMA before the day when they commence, or are required to commence, broadcasting.

### **CTS 10: Variations to a schedule**

CTS 10 provides for licensees to vary a schedule notified to the ACMA under CTS 9. CTS 10 prescribes how the notification is to be made to the ACMA and the manner in which the child audience is to be notified of variations.

The CTS Variation amends CTS 10 to detail the requirements of how the child audience is to be notified of variations in the following circumstances:

- > where a C or P period is moved to a later time in a schedule.
- > where a C or P period is moved to an earlier time in a schedule.
- > where a C or P period that was not originally scheduled is added to a schedule.
- > where a C or P period is removed from a schedule without being rescheduled.

The CTS Variation also amends CTS 10 to remove references to the terms 'C program' and 'P program' and replace these with the more appropriate terms 'C period' and 'P period' (respectively).

### **CTS 11: Material to be taken to be broadcast in accordance with schedule – expected events**

CTS 11 allows a licensee to displace a scheduled C or P period, in certain circumstances, for expected events.

The CTS Variation amends CTS 11 to detail the requirements of how the child audience is to be notified of displaced C or P periods in the following circumstances:

- > where a C or P period is displaced to a later time in a schedule.
- > where a C or P period is displaced to an earlier time in a schedule.

The CTS Variation also amends CTS 11 to remove references to the terms 'C program' and 'P program' and replace these with the more appropriate terms 'C period' and 'P period' (respectively).

### **CTS 12: Material taken to be broadcast in accordance with schedule – unexpected events**

CTS 12 allows a licensee, in certain circumstances, to displace a scheduled C or P period for unexpected events.

The CTS Variation amends CTS 12 to allow a licensee that displaced a C or P period in accordance with CTS 11 or CTS 12, to further displace that C or P period in certain circumstances.

The CTS Variation amends CTS 12(3)(d) to vary the requirements as to how the child audience is to be notified of the rescheduling of a displaced C or P period.

The CTS Variation amends CTS 12 to remove references to the terms 'C program' and 'P program' and replace these with the more appropriate terms 'C period' and 'P period' (respectively).

In addition, the CTS Variation corrects a minor drafting error in CTS 12(3)(c).

### **CTS 13: Requirements that apply only to C material**

CTS 13 sets out quota and scheduling requirements that apply to the broadcast of C material in each year.

The CTS Variation amends CTS 13 as it applies to new licensees. Licensees, in their first year of broadcasting, may meet reduced quotas, calculated using the pro rata formula.

In addition, the CTS Variation also amends CTS 13 to apply to licensees from the day they commence, or are required to commence, broadcasting. This is intended to clarify that the requirements to broadcast every weekday or on at least two days each week apply to licensees from the day the licensee commences, or is required to commence, broadcasting. CTS 13 is also amended to specify that if a licensee's broadcasting

commencement day in 2011 (or a subsequent year) is a Saturday, then for that week the licensee must broadcast 60 minutes of C material on that Saturday to comply with CTS 13(3)(a)(i).

**CTS 14: Requirements that apply only to P material**

CTS 14 sets out the obligation of licensees to broadcast at least 30 minutes of P material every weekday.

The CTS Variation amends CTS 14 so that it applies to new licensees from the day they commence, or are required to commence, broadcasting. This is intended to clarify that the requirement to broadcast every weekday applies to licensees from the day the licensee commences, or is required to commence, broadcasting.